

Department of the Navy, DoD

§ 724.110

Officer. He/she shall convene, recess and adjourn the NDRB Panel as appropriate.

§ 724.107 Discharge.

In the context of the review function prescribed by 10 U.S.C. 1553, a discharge or dismissal is a complete separation from the Naval Service, other than one pursuant to the sentence of a general court-martial. By reason of usage, the term “discharge” is predominantly applicable to the separation of enlisted personnel for any reason, and the term “dismissal” to the separation of officers as a result of Secretarial or general court-martial action. In the context of the mission of the NDRB, the term “discharge” used here shall, for purpose of ease of expression, include any complete separation from the naval service other than that pursuant to the sentence of general court-martial. The term “discharge” also includes the type of discharge and the reason/basis for that discharge, e.g., Other Than Honorable/Misconduct (Civil Conviction).

§ 724.108 Administrative discharge.

A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps or the Commander, Naval Personnel Command, but specifically excluding separation by sentence of a general court-martial.

[65 FR 62616, Oct. 19, 2000]

§ 724.109 Types of administrative discharges.

(a) A determination reflecting a member's military behavior and performance of duty during a specific period of service. The three characterizations are:

(1) *Honorable*. A separation from the naval service with honor. The issuance of an Honorable Discharge is contingent upon proper military behavior and performance of duty.

(2) Under Honorable Conditions (also termed General Discharge). A separation from the naval service under honorable conditions. The issuance of a discharge under honorable conditions is contingent upon military behavior and performance of duty which is not

sufficiently meritorious to warrant an Honorable Discharge.

(3) *Under Other Than Honorable Conditions* (formerly termed *Undesirable Discharge*). A separation from the naval service under conditions other than honorable. It is issued to terminate the service of a member of the naval service for one or more of the reasons/basis listed in the Naval Military Personnel Manual, Marine Corps Separation and Retirement Manual and their predecessor publications.

(4) *Entry Level Separation*. (i) A separation initiated while a member is in entry level status will be described as an Entry Level Separation except in the following circumstances:

(a) When characterization under Other Than Honorable Conditions is authorized and is warranted by the circumstances of the case; or

(b) When characterization of service as Honorable is clearly warranted by the presence of unusual circumstances including personal conduct and performance of naval duty and is approved on a case-by-case basis by the Secretary of the Navy. This characterization will be considered when the member is separated by reason of Selected Changes in Service Obligation, Convenience of the Government, or Disability.

(ii) With respect to administrative matters outside the administrative separation system that require a characterization of service as Honorable or General, an Entry Level Separation shall be treated as the required characterization. An Entry Level Separation for a member of a Reserve component separated from the Delayed Entry Program is under honorable conditions.

(b) [Reserved]

[50 FR 10943, Mar. 19, 1985, as amended at 51 FR 44909, Dec. 15, 1986; 65 FR 62616, Oct. 19, 2000]

§ 724.110 Reason/basis for administrative discharge.

The terms “reason for discharge” and “basis for discharge” have the same meaning. The first is a Navy term and the second is a Marine Corps term. These terms identify why an administrative discharge was issued, e.g., Convenience of the Government, Misconduct. Reasons/basis for discharge

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are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

§ 724.111 Punitive discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) *Bad conduct*. A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) *Dishonorable*. A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

§ 724.112 Clemency discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters." Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President's program, and has fully earned his/her return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the individual's military service as having been under other than honorable condition, nor does it serve to change, seal, erase or in any way modify the individual's past military record. Therefore, if the underlying discharge was issued as a result of a general court-martial, the issuance of a Clemency Discharge does not subject the underlying characterization to review under 10 U.S.C. 1553. Clemency discharges are issued by the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps when an individual has met the requirements of the Presidential Proclamation.

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§ 724.113 Application.

In the context of this Manual, a written application to the NDRB for the review of a discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin or legal representative. Department of Defense Form 293 must be used for the application.

§ 724.114 Applicant.

A former member of the naval service who has been discharged administratively in accordance with the directives of the naval service or by sentence of a special court-martial under title 10 U.S.C. 801 *et seq.* (Uniform Code of Military Justice) and, in accordance with statutory and regulatory provisions:

(a) Whose case is considered by the NDRB at the request of the former member, or, if authorized under § 724.113, the surviving spouse, next-of-kin or legal representative, or

(b) Whose case is considered on the NDRB's own motion.

§ 724.115 Next of kin.

The person or persons in the highest category of priority as determined by the following list (categories appear in descending order of priority): Surviving legal spouse; children (whether by current or prior marriage) age 18 years or older in descending precedence by age; father or mother, unless by court order custody has been vested in another (adoptive parent takes precedence over natural parent); siblings (whole or half) age 18 years or older in descending precedence by age; grandfather or grandmother; any other relative (precedence to be determined in accordance with the civil law of descent of the deceased former member's state of domicile at time of death).

§ 724.116 Council/representative.

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the NDRB. It includes, but is not limited to: a lawyer who is a member of the bar of a Federal Court or of the highest court of a State; an accredited